United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 13-1945**
	)	**Issued: February 24, 2014**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Marion, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 22, 2013 appellant, through counsel, filed a timely appeal from the June 20, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which denied his claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on October 30, 2009.

FACTUAL HISTORY

This case has previously been on appeal before the Board.[2] In a February 6, 2012 decision, the Board affirmed the March 31, 2011 merit decision of OWCP, finding that appellant

[1] 5 U.S.C. § 8101 *et seq.*

[2] Docket No. 11-1480 (issued February 6, 2012).

did not establish that he sustained a traumatic injury in the performance of duly on October 30, 2009. The facts of the case as set forth in the prior appeal are incorporated by reference.

By letters dated August 10, 2012 and January 3 and May 10, 2013, appellant's representative requested reconsideration.

In a May 2, 2012 report, Dr. Joel West Ray, a Board-certified neurological surgeon, noted that he had "interviewed the patient again. The patient states that at the time of the injury he was on full duty without restrictions, that the injury caused his symptoms, that it was documented. He had no recent prior injuries. Whatever prior injuries he had years previously were work related and those documentations are not in my chart but he states clearly that they were related." He opined that "[i]t is my opinion that based on all of the above plus a review of the record that the patient's symptoms for which he presented to me were specifically due to the incident of October 30, 2009. The care provided by me subsequent to that was necessary to care for those symptoms. I am reviewing this directly with the patient. He states that I am accurately so stating."

By decision dated June 20, 2013, OWCP denied modification of the March 31, 2011 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id*.

background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

ANALYSIS

In this case, OWCP accepted that appellant ran to help subdue inmates during a prison fight on October 30, 2009. The Board finds that the medical evidence does not establish that the accepted employment incident caused or contributed to his back, bilateral foot or left lower extremity conditions.

In a May 2, 2012 report, Dr. Ray noted that he had interviewed appellant who related that he was on full duty without restrictions at the time of the incident. Appellant denied any prior injury outside the work environment, which Dr. Ray noted were not documented in his medical records. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relationship.[9] Dr. Ray stated that "[i]t is my opinion that based on all of the above plus a review of the record that the patient's symptoms for which he presented to me were specifically due to the incident of October 30, 2009. The Board notes that Dr. Ray did not provide a full medical history; but relied on appellant's representation. The Board finds that Dr. Ray did not provide adequate rationale to explain the issue of causal relation. His opinion remains vague on "whatever prior injuries" appellant had were employment related. Dr. Ray did not describe how running at work on October 30, 2009 caused or contributed to the diagnosed conditions. A mere conclusion without medical rationale explaining how and why the physician believes that a claimant's accepted exposure resulted in the diagnosed conditions is not sufficient to meet the claimant's burden of proof.[10] Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

In the present case, there is no reasoned medical evidence from a physician explaining how and why the employment activities on October 30, 2009 caused or aggravated appellant's lower back pain and bilateral foot numbness. For these reasons, appellant has not established that the October 30, 2009 employment incident caused or aggravated a specific injury.

Appellant's counsel contends on appeal that the June 20, 2013 decision was contrary to fact and law. As noted, the medical evidence is insufficient to establish that the accepted October 30, 2009 employment incident was causally related to a back, bilateral foot or left lower extremity condition.

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *John F. Glynn*, 53 ECAB 562 (2002).

[10] *Beverly A. Spencer*, 55 ECAB 501 (2004); *see also T.M.*, Docket No. 08-975 (2009) (a physician's opinion on causal relationship between a claimant's disability and an employment injury is not conclusive simply because it is rendered by a physician; the physician must provide rationale for the opinion reached and where no such rationale is present, the medical opinion is of diminished probative value).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on October 30, 2009.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2014
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board